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Situation of human rights in the Democratic Republic of the Congo

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, Mr. Roberto Garretón (Chile), pursuant to General Assembly resolution 54/179 and Commission on Human Rights decision 2000/15, endorsed by the Economic and Social Council in its decision 2000/248.

* In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 20 September 2000 so as to include as much updated information as possible.

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Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo

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I. Introduction

A. Mandate

1. The Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, submits his fourth preliminary report on the situation of human rights in the Democratic Republic of the Congo (formerly Zaire) to the General Assembly, pursuant to Assembly resolution 54/179 and Commission on Human Rights resolution 2000/15. The report covers incidents that occurred up to 25 August.

B. Activities and administrative obstacles

2. The Special Rapporteur participated in the special session of the Security Council, held in January 2000 to consider the situation in the Democratic Republic of the Congo, convinced that human rights matters cannot be separated from the settlement of conflicts, whose root cause is the violation of human rights. The Carlsson report on United Nations responsibility in the Rwanda genocide, which concluded that the failure to heed the report of a Commission on Human Rights rapporteur had been one of the main reasons for the genocide, had already been published.

3. In order to attend the special session of the Security Council, the Special Rapporteur had to reduce the length of his only visit to the Democratic Republic of the Congo to only 10 days and limit his consultations to just one in Geneva, where there are few Congolese refugees.

4. The only assistance which the Special Rapporteur received was from an extremely efficient assistant in the Office of the United Nations High Commissioner for Human Rights, who, however, also has responsibility for four other States.

5. The Ambassador of the United States of America to the United Nations, the Special Representative of the Secretary-General, the Government of the Democratic Republic of the Congo, the leaders of the Rassemblement congolais pour la démocratie (RCD) and of the Mouvement de libération du Congo (MLC), ambassadors in Kinshasa and the heads of United Nations agencies expressed concern at the fact that the Special Rapporteur had paid only one brief visit to the country, which they felt would affect his credibility.

6. During his mission to the Democratic Republic of the Congo (13-26 August 2000), the Special Rapporteur visited Kinshasa. He also visited Goma, Bukavu and Kisangani, which are under the control of RCD/Goma faction and Gbadolité, which was captured by MLC. Both the Government and rebel authorities permitted him to work and conduct his interviews freely. Obstacles were encountered, however, when he attempted to visit the military and police detention centres in Kinshasa and Bukavu. He also had meetings with or reviewed the reports of political parties and of intergovernmental and non-governmental institutions and organizations (see E/CN.4/2000/42, annexes II-V).

7. The Special Rapporteur transmitted 22 communications and urgent actions to the Government, including 86 allegations of violations of human rights. Three of these were acknowledged and one reply received.

8. RCD authorities submitted two extensive reports to the Special Rapporteur, which the latter welcomes.

C. Pending activities and investigations

Joint mission to investigate allegations of massacres committed in 1996

9. In paragraph 5 (b) of its resolution 2000/15, the Commission on Human Rights renewed the mandate of the joint mission established by its resolution 1997/58 to investigate violations of human rights and international humanitarian law committed in the east of the former Zaire between 1996 and 1997.

10. The Government also requested the Secretary-General to carry out an investigation into the events that occurred in the locality of Ituri (letter of 8 February 2000) as well as an investigation into allegations of the deaths of 15 women who were buried alive or burnt in Mwenga, situated in RCD-controlled territory. Both the Government and RCD requested special investigations into the Katogota massacre. Because of the prevailing insecurity and lack of financial resources, these investigations are still pending.

D. International obligations of the Democratic Republic of the Congo

11. Contrary to the public announcement, the Democratic Republic of the Congo did not accede to the Protocols Additional to the Geneva Conventions. The Government is late in submitting 10 reports to treaty bodies. It has not completed a single report nor replied to the communications addressed to it by the respective treaty bodies.

E. Reprisals against individuals who cooperated with the United Nations

12. The Special Rapporteur denounces the reprisals taken against the following persons who cooperated with him during his visits or who submitted reports to him, pursuant to Commission on Human Rights resolution 2000/20.

13. In RCD-controlled territory: Monsignor Emmanuel Kataliko, Archbishop of Bukavu, who had been interviewed by the Special Rapporteur, was detained and subsequently exiled to Butembo, on 12 February 2000. Collete Kitoga was arrested in Goma upon her return from the fifty-sixth session of the Commission on Human Rights.

14. In territory controlled by the Rassemblement congolais pour la démocratie/Mouvement de libération (RCD/ML), Sylvain Mudimbi Masudi was detained in Benin for attending the session of the Commission on Human Rights and was transferred to Uganda.

II. The various armed conflicts

15. The Democratic Republic of the Congo is bedevilled by various armed conflicts, some international, others internal and yet other internal conflicts that have been internationalized (see E/CN.4/2000/42, para. 20). Participants in these conflicts include at least eight national armies[1] and 21 irregular armed groups. All of these forces are operating entirely in the territory of the Democratic Republic of the Congo, which has seen its population decimated and its wealth extracted by occupying and rebel forces.[2]

A. The conflict between the Government and RCD

16. The conflict between the Government and RCD began on 2 August 2000, following Rwanda's invasion of the Democratic Republic of the Congo. It is the most serious of the conflicts, not only because of its political and economic repercussions but also because it restricts the enjoyment of the civil, cultural, economic, political and social rights of the population of the entire region.

17. On one side are the armies of Rwanda, Burundi, Uganda and RCD/Goma faction, together with its paramilitary group Local Defence Unity. Allegations have been made of the involvement of Interahamwe deserters and Rwandan Hutu prisoners, who were released and sent to the front. The mineral riches of the Democratic Republic of the Congo in Katanga, Orientale province and Kasai Oriental have been depleted by foreign troops and RCD.

18. For its part, the Government has relied for its defence on counter-rebel militias: it has open and confirmed ties to the Mai-Mai,[3] a group that is gaining in popularity with a local population tired of being subjected to the control of forces they consider foreign. It also has informal ties to other "counter rebels": RCD deserters, Rwandan Bahutu Interahamwe, members of the former Rwandan Armed Forces (FAR), and Burundian Bahutu, among others.

19. The violence is unleashed by the attacks of the counter-rebels against military forces which they consider to be aggressors. The response of the Rwandan army, RCD and the Burundian army is to attack the defenceless civilian population, committing indescribable massacres, such as those that took place at Katogota, on 15 May 2000, Kamanyola, Lurbarika and Luberizi, or the massacre in July 2000 on the Lusenda-Lubuma highway (see E/CN.4/2000/42), as well as the events — denied, as others have been, by RCD/Goma faction — that took place in Mwenga in November 1999, in which 15 women were tortured and buried alive (see S/2000/330, para. 61).

20. Another factor contributing to the violence is the antagonism between RCD and Banyamulenge, who are fed up at being the target of the resentment of Congolese over the abuses committed by the Armée patriotique rwandaise (APR).

21. By its resolution 1304 (2000), the Security Council demanded that Uganda and Rwanda, which have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo. The withdrawal should be followed by reciprocal actions by the other parties, which have not taken any such action.

B. The conflict between the Government and MLC

22. In Équateur province, the Congolese Armed Forces (FAC), supported by Zimbabwe and Namibia, are fighting MLC, which is supported by Uganda. It is in this province that the parties have shown the least respect for the ceasefire, and indeed the rebel leader has long maintained that he felt under no obligation to observe it. President Kabila contends that MLC has rendered the ceasefire agreement null and void.

C. Clashes between Uganda and Rwanda in Kisangani

23. Once again there were clashes in Kisangani, the third largest town in the country, previously controlled by the two RCD factions and currently controlled by RCD/Goma, between the "uninvited armies" of Rwanda and Uganda (supported by RCD/MLI). The worst clashes occurred on 5 and 9 May and on 8 June 2000. The causes are economic (both armies want the huge wealth of Orientale province) as well as political (control of the territory).

24. During the confrontations, particularly the most recent one, not only combatants but also close to 1,000 Congolese civilians were killed, thousands were wounded and much of the town was destroyed, as the Special Rapporteur in the field has confirmed.

25. Calls for a ceasefire, including from the Security Council, went unheeded and moves towards demilitarization were disregarded the very next day. Only the latest one seems to be holding.

D. Tribal conflict between Balendu and Bahema

26. The Ugandan occupation of the Ituri region has led to conflict between the Bahema (of Ugandan origin) and the Balendu, who have been in the region longer. With support from the Ugandan soldiers, the authorities appointed by them and RCD/ML, the Bahema have seized land from the Balendu who have no support. Except for some incidents in 1911, 1923 and 1955, these two ethnic groups had lived without major difficulties for nearly three centuries. The current confrontations, which flared up again in August 2000, have resulted in some 8,000 deaths and the displacement of some 50,000 people.

E. Ceasefire agreements and observance thereof

27. Following tremendous pressure from the international community (see E/CN.4/2000/42, para. 18 and annex X), the parties concluded a ceasefire agreement in Lusaka, in 1999. They did not abide by the agreement and, as a result, the timetable had to be adjusted (Lusaka, 12 February 2000, Kampala, 1 March and 8 April, at which time it was agreed that hostilities would cease from 14 April 2000). Only the last one was observed, except in the fighting between MLC and RCD. In spite of everything, the belligerents have, on the whole, kept to the positions they held in August 1999.

28. The Lusaka agreement provided for the deployment of a United Nations force — the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) — of some 5,537 observers and security personnel in the territory in conflict and for the demobilization and disarming of the armed groups. MONUC quite rightly maintains that disarming the groups, if they do not disarm themselves, is not part of its mandate but a matter for the signatories.

29. Inexplicably, the Government received MONUC aggressively and blamed the United Nations for the death of Lumumba back in 1961.[4] MONUC continued to be attacked verbally and in fact (pro-Government demonstrations in June 2000) for its lack of objectivity, based on the fact that its reports are said to give more importance to the Mai-Mai and Interahamwe attacks on

the RCD forces and their allies than to the latter's counterattacks on civilians.

30. Despite all the statements to the contrary and despite the conversations between Presidents Kabila and Kagame (Eldoret, Kenya) and the influence of Kenya, Zambia, South Africa, Algeria, Nigeria, Botswana, Mozambique, Mali, the Organization of African Unity, the United Nations and others, the parties all seem bent on winning the war by military means.

31. A meeting of the Southern African Development Community (SADC) on 14 August 2000 failed because Kinshasa opposed any solution, feeling that since the circumstances of the conflict had changed the Lusaka agreement should be adjusted. A proposed change was submitted to the other parties on 23 August 2000.

F. Impact of the war

32. The war has destroyed the country. More than half the population has been affected. All public moneys are being diverted to the war effort. There have been terrible epidemics. Only 9 per cent of all health districts have refrigerators for keeping medicines. Since it is impossible to cultivate the land due to the war, 17 per cent of the population (14 million people) are now affected by food insecurity, according to the Food and Agriculture Organization of the United Nations (FAO). The number of sheques (street children) has risen alarmingly.

33. The Congolese people have looked on helplessly while those whom it calls aggressors have taken away all its wealth and caused enormous ecological damage.

34. There are more than 1,300,000 internally displaced persons, many of whom are without any assistance. The vast majority come from the occupied territories in the east. Their situation was made worse by the attacks carried out in July 2000 on the displaced persons camps in Sake and Uvira, both by the Mai-Mai and by Rwandan soldiers; these attacks forced many non-governmental organizations to suspend their relief activities.

35. If one includes those who sought asylum when Mobutu was in power, there are Congolese refugees all over the world. Most recently, due to the fighting between RCD and MLC, there are reported to be some 72,000 refugees in Congo Brazzaville.

36. Congolese Tutsi who had sought refuge in Rwanda are returning to Goma with support from RCD through one non-governmental organization, but against the wishes of the Office of the United Nations High Commissioner for Refugees (UNHCR) which fears that this may lead to increased violence.

G. Situation of persons at risk

37. These are the Batutsi or people who look like Tutsi living in the territory under government control, who fear reprisals from the population for the "Rwandan aggression". At the start of the war, the Government called for their elimination (see E/CN.4/1999/31, para. 45), but later it opted for a position of protection and even established protection centres (not detention centres as alleged by the Rwandan Government and RCD) with the help of the International Committee of the Red Cross (ICRC) and foreign Governments. This policy has made it possible for many people to be repatriated or to take refuge in Rwanda, Uganda and Burundi and others have found refuge in Cameroon, Benin, the United States or Canada. In 2000, there were 2,796 people living in the protection camps; when the Special Rapporteur visited the camps in Kinshasa, the number had fallen to 299.

III. Political development and democratization in Government-controlled territory

38. The power structure described in all reports since 1997 remains intact; tremendous power (executive, legislative and much of the judicial power) remains concentrated in the hands of President Kabila (see E/CN.4/1998/65, para. 32 to 37; E/CN.4/1999/31, para. 17 and E/CN.4/2000/42, paras. 32, 33 and 127).

39. The Government has made us move towards democracy; according to all the indications, it does not wish to do so. The only thing that has changed is that the "national debate", which the President instituted in 1999 but which was never accepted by civil society, has ended. Although the main moral, religious,[5] political and civil institutions are clamouring for democracy — in the sense of Commission on Human Rights resolution 2000/47 — and demanding the dialogue provided for at Lusaka as a means thereto, President Kabila has shown no interest in the matter.

40. Indeed, the President has always rejected the national dialogue. The facilitator designated by OAU, the distinguished former president of Botswana, Ketumile Masire, was accepted and later rejected by the Government; the latter has consistently prevented him from fulfilling his delicate mission; (it has levelled vague charges of "duplicity of roles" against him; prevented him from travelling to towns under rebel control; rejected his work plan; failed to attend, and prohibited political parties and civil society from attending, the preparatory meeting in Benin; withheld tickets and passports; refused to receive him, closed his office and so forth).

41. In addition, the ban on political parties and civil organizations that do not meet the draconian conditions set by Decree Law 194 and Decree Law 195 (see E/CN.4/2000/42, para. 33 and 70) remains; persons who are not members of a party constituted in accordance with the new law are not permitted to make political speeches; pro-Government parties (the only ones recognized) have been established; and all political activity has been suppressed, resulting in hundreds of arrests and personal attacks (Union pour la démocratie et la progrès social (UDPS), 26 July 2000); persecution by the People's Power Committees (CPP) (Parti Lumumbiste unifié (PALU), 17 January 2000); unlawful searches (MNC/L, 22 April 2000); the discredited CPP remain (the election of members failed due to lack of interest on the part of the population), as does the Force d'auto-défense populaire (FAP) militia; the agreements regarding the democratization of the "national consultation" which had been called for by the religious leaders and which demanded that the Lusaka agreements and the inter-Congolese dialogue be respected have been rejected, limited dialogues have been convened (January, February and May 2000) but are limited to supporters, etc.

42. On 21 August 2000, notwithstanding the Lusaka accords, a Constituent and Legislative Assembly was established; under the sole direction of the President and without any consultation and without consensus, it was decided that the Assembly's headquarters would be in Lubumbashi. Although a few opponents were called, in their personal capacity, the Assembly was not accepted by the country's best known leaders. In any event, its mandate is purely consultative and it in no way diminishes the absolute powers of the President.

IV. Political development and democratization in territory controlled by rebel movements

Territory controlled by RCD

43. In the territory controlled by RCD, the Congolese people's feelings of terror and humiliation not only persist but are growing stronger (see document E/CN.4/2000/42, paras. 43-47, 125 and 133). This explains the increasing popularity of the Mai-Mai.

44. RCD is the only party, and it holds absolute power to such an extent that the provincial governors and heads of public services preside over their own RCD cells. Party officials deny that theirs is a "State party", saying that it is not a party but a movement of trade unions, and that pluralism will come about eventually. In the Special Rapporteur's view, this explanation only confirms that the party is, in reality, State-run. No efforts towards greater pluralism are in evidence. The paramilitary "local defence units" are a contributing factor in the considerable feeling of insecurity.

45. All forms of dissidence are suppressed; any criticism is considered an incitement to national hatred or genocide and the whole population is suspected of collaborating with the Mai-Mai. A typical example is the absurd expulsion of Archbishop Emmanuel Kataliko from Bukavu for his Christmas message, which was considered to be an incitement to genocide. The Special Rapporteur has read and studied the text closely, and he can safely say that there is not a single sentence, word or idea, taken in isolation or in context, that could be interpreted, even with the worst of intentions, in this way.

46. Attempts to humiliate the population continue (see document E/CN.4/2000/42, para. 46). As a new way of castigating the Nyndu tribe, already punished by the horrible Kasika massacre in 1998 (see document E/CN.4/1999/31, para. 56), RCD/Goma has taken land from them in order to create a Minembwe territory. RCD has provided the facilitator, Ketumile Masire, with a list of "opposition parties", such as the Front uni de l'opposition non armée (FRONUAR), and others that exist in Kinshasa without representatives in the region.

47. The population recognizes and defends the guerrilla activities of the Mai-Mai, blaming "Rwandan soldiers" instead for the violence.

48. The population's opposition is illustrated by various acts of protest, such as the general strikes in Bukavu by students on 24 January 2000 and from 31 January to 6 February 2000; a demonstration in Kisangani by women on 31 January 2000, in Goma, on 14 February 2000; in Uvira, Kindu and Bukavu (a week-long beer strike successfully carried out in April 2000), among others.

49. RCD has frequently split into factions (see document E/CN.4/2000/42, para. 43), and efforts at reunification are being made not among Congolese leaders, who appear to be leading the factions, but between the Presidents of Uganda and Rwanda (November 1999; January 2000). In March 2000, three RCD/Goma leaders defected and were later accused of spying by Kabila; subsequently, other internal dissidents broke away and formed RCD/National. The Banyamulenge expressed their concern about massacres of the local population in July 2000, which made their own situation worse, and they organized marches in Bukavu and Uvira.

50. In April and August 2000, attempts to depose the President of RCD/Bunia were defeated through the influence, once again, of the President of Uganda and his army.

51. The small RCD/Bunia faction has also taken steps that have stirred up the population, such as supporting the Hema against the Lendu, or the creation of the Kibali-Ituri province to favour the former.

Territory controlled by MLC

52. In the territory controlled by MLC, the people do not live in terror, but there is one-party rule. The representative of civil society to Benin was appointed by MLC.

V. Human rights violations committed by the Government[6]

Right to life

Death penalty

53. The Government, which says it is against the death penalty, made a number of announcements (on 10 December 1999 and 27 January 2000) to the Special Rapporteur on the suspension of this penalty (see document E/CN.4/2000/42, paras. 49 and 50), but continued to apply it, at least until February 2000, when 19 persons were executed. The President of the Military Court reported that it continues to be enforced "on the front". The Special Rapporteur visited 41 persons who are awaiting a pardon, which the President has promised to grant.

Enforced disappearances

54. The number of reported disappearances has declined. None of the cases recorded in previous years, however, have been cleared up. Nicolas Bantu, Aimé Ngobe and Serge Itala have been missing since their arrest in December 1999.

Death by torture

55. Given the systematic and habitual practice of torture, deaths have been reported, such as that of Kalombo Ilunga in July 2000; he had been detained by the police in Lubumbashi, and his corpse was found in the morgue.

Political assassinations

56. None have been reported.

Right to physical and psychological integrity

57. Torture is brutally and systematically practised, especially by GSSP but also by the National Information Agency (ANR). Tolerance of the existence of secret detention centres, lacking any control whatsoever, contributes to this scourge. One particularly well-known centre is that of the Litho Moboti Group (GLM); its commander was detained on 9 March 2000 but unfortunately was freed days later, with no charges having been filed. Torture is facilitated by the fact that the Detection of Unpatriotic Activities Police (DEMIAP) has no public register of detainees,

and in the provincial police inspectorate (formerly Circo) all detainees are not placed in a single centre, as the Special Rapporteur observed. Representatives of the Human Rights Office of the Democratic Republic of the Congo are not authorized to enter any centre that is not a prison.

Right to personal liberty

58. This is the right most often threatened. Journalists, lawyers, religious leaders, human rights workers, politicians, trade union leaders and others are detained, generally on the grounds of violating the ban on political activities or of colluding with the rebels. The times vary from a few days to years. Often, no charges are filed against the prisoner, although sometimes detainees are transferred to the Court of State Security and the Military Court. No one escapes the risk of jail, not even retired judges (for example, the former President of the Supreme Court) or active judges (a military magistrate), ambassadors (the representative to Kenya), ministers (six were detained on 2 June 2000) or other officials at this level, and even a member of the Constitutional and Legislative Assembly.

59. A positive step has been the admittedly partial, discretional and conditional amnesty declared on 19 February 2000, by which some 300 prisoners were belatedly released. In July 2000, 800 soldiers were also released, to be sent to the front.

Right to enter and leave the country

60. It is difficult for opponents to leave the country, since their passports and airline tickets are often confiscated. Similar problems affect journalists, priests and human rights activists. Representatives of civil society were prevented from travelling to Benin to the preparatory meeting for the national dialogue provided for in the Lusaka Agreement.

Right to due process

61. The criticisms of the Military Court concerning procedural irregularities (summary judgements, sole jurisdiction and others) are still absolutely valid. (See documents E/CN.4/1999/31, paras. 90, 91 and 137, and E/CN.4/2000/42, paras. 63, 122 and 137.) Detainees are held for a long time awaiting trial.

62. One indication of the lack of independence of the judiciary, which is referred to in Commission on Human Rights resolution 200/42, is that the Procurator-General of the Court of State Security was held in prison for 30 days for refusing to approve a raid on the Belgian Embassy. The attorney-general was also detained.

63. Owing to the lack of guaranties, the 15 defenders of an independence fighter refused, with his agreement, to defend him, and he was sentenced to four years of hard labour.

Freedom of expression and opinion

64. The Special Rapporteur has transmitted communications to the Government from more than 30 detained journalists, who were tried and/or convicted by the Military Court or frightened away from practising their profession. Mobutu's draconian laws are still in full force. The Vice-Minister of Information justifies this by saying "we cannot tolerate traitors", and the President has said that "the law must be obeyed". The main private television station was confiscated in March 2000. Independent media have no access to the authorities.

65. Despite the existence of some newspapers, the judgement is categorical: there is no freedom of expression in the Democratic Republic of the Congo.

Freedom of association

66. Political parties are still banned, unless they submit to new registration requirements and risk being rejected. Political activity, even making speeches, is prohibited. Dozens of leaders and activists have been detained or prevented from leaving the country or the city where they live, and their headquarters have been attacked and ransacked.

67. Human rights organizations suffer similar treatment. The ban on them has not been lifted.

Economic, social and cultural rights

68. Public employees, except for some in Kinshasa, have still not been paid, and trade union leaders who protest against this are accused of endangering State security. More than a third of the population lack even the basic necessities of life. The real malnutrition rate, according to some sources, is 26 per cent.

69. Serious epidemics have been left untreated because the war uses up most of the country's income.

Situation of women

70. The situation described in previous reports remains unchanged. A new form of discrimination has appeared: women's organizations have lost their voice to a para-State group known as Regroupement des Femmes Congolaises (REFECO), and their employment and educational situation has deteriorated as a result of the war.

71. Sources have told the Special Rapporteur that 8 per cent of women have acquired immunodeficiency syndrome (AIDS), owing to poverty, lack of education and, especially, sexual contact with Rwandan and Ugandan soldiers, whose countries have a high AIDS rate.

72. Only 24 out of 300 members of the Constitutional and Legislative Assembly are women.

Situation of children

73. The right to education has been greatly curtailed by the war and poverty, resulting in irreparable harm to many children. Violations of children's rights also include child labour in inhumane conditions in the diamond mines.

74. On a more positive note, Decree Law 66 was enacted in June 2000, demobilizing children and other vulnerable groups and creating a commission on demobilization and reintegration.

Freedom of conscience and religion

75. The Special Rapporteur is dealing with this topic for the first time. The Government regards religious congregations as enemies who are allied with rebellion or aggression. Peace messages are viewed with suspicion, and the proclamation of freedom and justice are considered subversive. Presbyterian churches, the Ubangi-Mongola Evangelical Community, the Bundu dia Kongo sect, the Siani and Unification/Cabinda, together with German, Austrian and Belgian priests and a Catholic bishop, have been repressed.

VI. Human rights violations committed in territory occupied by RCD and MLC

Violations in RCD territory

Right to life

Death penalty

76. The Special Rapporteur had welcomed the fact that RCD did not apply the death penalty (see E/CN.4/2000/42, para. 81). Nevertheless, on 17 March 2000, the *Conseil de guerre opérationnelle*, in two proceedings within 24 hours, tried a corporal, who was executed on the spot, and three other persons condemned to death in July 2000 were taken from the prison and never returned.

Political murders

77. Soldiers referred to as "Banyamulenge", "Rwandans", "Ugandans" and "Burundians" have committed countless murders of persons suspected of being members of the Mai-Mai or Interahamwe. Among the victims are priests, Protestant pastors, Baptists, traditional tribal leaders and peaceful citizens. Three youths were murdered simply because they bore tattoos, leading Burundian soldiers to assume that they were members of the Mai-Mai.

Death by torture

78. The frequency and cruelty of torture was mentioned frequently to the Special Rapporteur. One person was arrested and tortured to death for carrying out political activity in Kiwandja (North Kivu) in March 2000.

Right to physical and psychological integrity

79. Most of the complaints of torture involve the police headquarters known as *chien méchant* ("vicious dog") and "Bureau II", which sources say are administered by "Rwandan soldiers" and, in Kisangani and Bunia, by "the Ugandans". It is claimed that Congolese are among the victims, as well as Rwandans transferred from Rwanda. The victims are mainly those suspected of being members of the Mai-Mai and Interahamwe. Representatives of the Human Rights Office in Goma can only visit the jails, like other detention centres. The Special Rapporteur confirmed

that the records of the RCD Sixth Brigade do not account for all inmates.

Right to liberty of person

Arbitrary detention

80. Human rights defenders, leaders of civil society, journalists and members of the clergy have continually been deprived of their freedom and are at constant risk of being detained again. The arrests are aimed at suppressing activities lawful in a democratic society, such as dissidence, criticism, education, culture and freedom of conscience, or are preventive: persons suspected of not being devoted to the RCD authorities are detained because of actions that they might carry out, as occurred, for example, prior to the civil strikes carried out in Goma, Bukavu and elsewhere. Resigning from RCD carries with it the certainty of arrest. The same thing happens in territory occupied by RCD/Bunia, where two high-ranking leaders of RCD/ML were detained and tortured near Bunia in July 2000.

Deportations

81. In Geneva in March 2000, the RCD authorities explained to the Special Rapporteur that there are no cases of deportation of prisoners from the Democratic Republic of the Congo to Rwanda, Uganda or Burundi and that, at most, prisoners of war are involved. The incidents are more frequent under RCD/Bunia than under RCD/Goma. In any event, the Special Rapporteur emphasizes that, during the period under review, he learned of various cases of human rights defenders and others (traders) detained in Congolese territory and taken to Katuna (Rwanda) or Uganda.

Right to enter and leave one's own country

82. There are lists of persons linked to human rights organizations who have been prevented from leaving RCD-controlled territory; many cannot even leave Kivu. In early March 2000 there were reports of an ordinance which prevents all Congolese from travelling to countries other than Rwanda or Burundi without official permission, which is generally denied. Even members of the Protestant clergy could not travel to a conference in Nairobi in 1999.

Right to due process

83. Generally speaking, defendants are not tried; their release is at the discretion of the authorities. In any event, the most serious breaches of the norms of due process stem from the guarantee of impunity for the massacres, murders and tortures inflicted on those accused of inciting hatred. The so-called, belated prosecution of the person responsible for the deaths of 15 women in Mwenga ended with the flight of the individual who is seen as the main perpetrator and as an emblematic figure because of his ferocity. The fact that those allegedly responsible for the flight are being prosecuted in no way justifies the action.

Right to freedom of expression and opinion

84. There have been no changes with regard to the statements made in document E/CN.4/2000/42, paragraphs 91 to 93. There is no freedom of expression; there are no daily newspapers; Radio Maendeleo was returned to its operators, but has been prohibited from broadcasting political opinion and news.

85. In Kisangani, while Rwandans and Ugandans shared power, the radio stations vehemently incited racial hatred: Liberté, against the Rwandans, and RTNC/Rebelde, against the Ugandans. But the victims are Congolese.

Freedom of association

86. There are, of course, no political parties, except RCD and FROUNAR, for example, which RCD formed prior to the visit of the Facilitator, Ketumile Masire, in May 2000. All political activity is prohibited and punished.

Human rights organizations

87. RCD responded to the report of the Special Rapporteur, claiming that it was established beyond a doubt that the non-governmental organizations in South Kivu were operating with financial support from the Kabila Government and that they are the sources of information for the Special Rapporteur. That point was emphasized during the visit. In fact, the non-governmental organizations are severely persecuted, always on the charge of inciting ethnic hatred, but not a shred of evidence has been presented in this regard. Many defenders have been imprisoned, tortured and threatened and many have had to seek refuge abroad.

Freedom of assembly

88. No allegedly critical gatherings are tolerated, and the protests called *villes mortes* (civil strikes) have been suppressed with arrests and threats.

Economic, social and cultural rights

89. The extremely serious situation throughout the country is particularly serious in the east: malnutrition in Kisangani reportedly affects 30 per cent of adults and 60 per cent of children. Civil servants remain unpaid. The health care system is destroyed and family members usually take turns eating.

Situation of women

90. In addition to the Mwenga incident, mention should be made of the arrests of feminist activities, rapes and beatings of female secondary-school students detained for insisting on the validity of their examinations in the Democratic Republic of the Congo, and continual cases of rape of women detainees.

Situation of children

91. As in the Democratic Republic of the Congo, RCD is establishing a commission for demobilization of child soldiers. Nevertheless, the Mission has noted that the level of recruitment of children is much higher in the east than under Kabila. An example of this is Nyaleke, near Beni, where Ugandan soldiers are training 10-year-old children.

Freedom of conscience and religion

92. In RCD territory, too, the Catholic and Protestant churches are persecuted because of their messages of peace; this has made it possible to assert that the only thing that unites Rwandans and Ugandans is their hatred of the Christian churches. In the east the majority Catholic Church has been the most persecuted: murders of several priests, banishment of the Archbishop of Bukavu, attacks on convents and parish houses, and so on.

Human rights violations in MLC territory

93. There is minimal information on the region, which has negligible civic activity. There are very few non-governmental organizations and newspapers. The Special Rapporteur spent a few hours visiting the small hamlet of Gbadolite, but was unable to visit other towns in which there are more victims of human rights violations.

VII. Violations of international humanitarian law

A. Violations by the Government, allies and related groups

Government

94. The Government is responsible for the bombings of the Libenge hospital on 27 July 2000; of Gemena and elsewhere, which affected civilian populations; and of aircraft loaded with poliomyelitis vaccines (war against MLC).

Mai-Mai

95. The Government's support for the Mai-Mai makes it responsible for the offences perpetrated by the latter. While, generally speaking, they attack Rwandan and RCD soldiers, they have also committed violence against civilians suspected of collaborating with those whom they regard as the "enemy". The growing popularity which they enjoy among the Congolese does not absolve them of responsibility. Among their acts of brutality are those at Lubero in April 2000, Nyabibwe, Numbi (50 dead) and Kihuha in July 2000.

Interahamwe/ex-FAR combatants

96. The Interahamwe and ex-FAR combatants are responsible for attacks on the civilian population (Loashi, Luhinzi, Rutshuru, Kione, Ngesha and many others). In the villages which they attack they commonly rape women and girls.

Freed Rwandan prisoners

97. It should be noted that freed Rwandan prisoners who had been held in Kinshasa acknowledged that they had been well treated while they had been prisoners of the Zimbabweans, to the point where at least four preferred to stay in Kinshasa rather than return to their homeland.

B. Violations by RCD, RCD/ML, MLC and allied foreign military forces

Components of RCD

98. The population does not distinguish among the various components of RCD, which it identifies as Rwandan soldiers or Banyamulenge.

99. Any attack by members of the Interahamwe, Mai-Mai, and so on is met by totally disproportionate violence; massacres are committed, resulting in many deaths. Mere suspicion of sympathy with the Mai-Mai provokes reprisals against the civilian population: Ngenge (November 1999); Kalehe (December 1999, 23 dead); Kilambo (February 2000, 60 dead); Katogota (May 2000, 40 to 300 dead); Kamanyola, Lurbarika, Luberezi, Cidaho, Uvira, Shabunda; Lusenda-Lubumba (July 2000, 150 dead).

100. Particularly reprehensible is the treatment of prisoners by Rwandan soldiers. The Special Rapporteur visited one Congolese soldier taken prisoner in Katanga who was beaten, tortured, castrated and abandoned, a practice condemned earlier by the Special Rapporteur (see E/CN.4/2000/42, para. 117).

101. Humanitarian assistance has been intercepted and diverted to Congolese Batusti repatriated from Rwanda.

Burundian soldiers

102. Burundian soldiers are accused of killing nine civilians in Sebele in reprisal for a Mai-Mai attack in April 2000.

Ugandan troops

103. Ugandan troops have murdered civilians. The most serious incidents occurred during the Ugandan-Rwandan battle at Kisangani, in whose vicinity, furthermore, they planted antitank and anti-personnel mines.

104. In alliance with the Bahema, they have committed atrocities against civilians (for example, Libi, March 2000, nine dead) and taken civilians prisoner, including children (Walendu Tatsi).

105. Ugandan troops also shelled a boat in which women and children were fleeing the war, causing some 30 deaths; no assistance was given to them.

106. They recruit many child soldiers.

VIII. Conclusions and recommendations

A. Conclusions

The catastrophe in Central Africa

107. Central Africa is a region of great riches, but its inhabitants are living in extreme poverty. The terrible history of unscrupulous dictators — all of whom, however, had support from abroad — is one of the causes of the catastrophic situation that now exists. Eight national armies and numerous armed groups are involved in the primary war between the Democratic Republic of the Congo and Uganda, Rwanda and Burundi, which may rightly be called the first world war in Africa, and nine more armed conflicts are taking place in the same country. Extreme poverty, which existed even prior to the current wards, has reached catastrophic levels that have been further increased by the war. The Congolese people cannot understand why those responsible for their problems, who are members of the international community, do not come to their aid now.

108. The parties, their allies, other African countries, the major Powers, the Organization of African Unity (OAU) and the United Nations have failed to achieve peace since it seems that economic and political interests other than those of the Congolese people are involved in the Democratic Republic of the Congo, and the Congolese are aware of this fact. There can be no peace in the Democratic Republic of the Congo without lasting peace in the region. There are historical conflicts and ambitions that require long-term solutions based on respect for principles on which there can be no disagreement: respect for the human rights of all Congolese, justice for those responsible for the crimes against humanity which have been committed and respect for the borders inherited from the colonial era.

The armed conflict

109. None of the parties to the nine conflicts, whether internal, internationalized internal or international, is fully respecting the Lusaka Ceasefire Agreement, although there has been no significant change in their positions. The Congolese consider the Rwandan, Ugandan and Burundian armies to be "aggressors" rather than as providing support to the rebels. While the activities of the Interahamwe and Mai-Mai are the

primary cause of the violence, it is the armies of Rwanda, Uganda, Burundi and Rassemblement congolais pour la démocratie (RCD) which are causing the greatest damage and which have once again committed terrible massacres of the civilian population. In addition, Rwanda and Uganda have expanded their own conflicts into Congolese territory, causing death and destruction on neighbouring soil.

The occupation of the Democratic Republic of the Congo

110. The Special Rapporteur has often been asked whether the occupation of the Democratic Republic of the Congo should be considered permanent. That issue should not even be raised since there can be no justification for the conquest or partition of a country by foreign forces. This is the position stated in the fourth preambular paragraph of Security Council resolution 1304 (2000). In occupied territory, the sense of humiliation and terror described in previous reports still prevails.

Immediate effects of the Special Rapporteur's visit

111. Days prior to the visit, and particularly during his visit to the Democratic Republic of the Congo, both in Government- and RCD-controlled territory, prisoners were freed or transferred from illegal detention centres to official jails; judicial proceedings that should have begun months previously were opened; sick prisoners were given better medical care and journalists were given greater access to information sources.

Violations of international humanitarian law

112. The most serious incidents were the massacres committed by RCD and Rwandan forces, attacks on civilians during the Rwandan-Ugandan wars and Government bombing of civilian populations in the north.

Human rights

113. In the Government-controlled territory, the rights most affected are political rights (participation, assembly, association and freedom of expression). In RCD- and RCD/ML-controlled territory, the rights most often violated are human rights (life and physical integrity) without prejudice to political freedom. There is insufficient information on the MLC-controlled territory.

Right to democracy

114. Neither the Government authorities nor those of RCD, RCD/ML or MLC have taken any steps towards democracy. The Government continues to reject all dialogue with the national democratic opposition; it persecutes political parties, continues to declare them illegal and punishes their leaders and activists. It rejects the mediator whom it had previously accepted. It is establishing new and illegal structures. In the occupied territories there is only one party, either RCD or MLC. Other parties only appear to exist. Those not in sympathy with RCD have ceased all activities and their leaders have chosen exile. MLC is the only party in the territory it controls.

Human rights advocates

115. They are persecuted by both sides; one considers them to be "in league with the rebels", the other considers them to be "in Kabila's pay" or "Interahamwe or Mai-Mai collaborators".

Death penalty

116. The Government maintains it but has not implemented it since February 2000. RCD, which had never implemented it, began to do so in 2000.

Liberty of person

117. It is constantly violated, and there are many political prisoners on both sides. The Kinshasa amnesty was encouraging, but it did not affect all prisoners and politically-motivated imprisonment of, inter alia, Ministers and other high-level officials has continued.

Freedom of expression

118. There is none. In Government-controlled territory, there are a few newspapers with a limited circulation and journalists are regularly harassed. In RCD-controlled territory there are no opposition newspapers and the few independent radio stations have been shut down, censored and prevented from broadcasting any news programmes other than the official ones.

Torture

119. Torture is practised by all parties and in many instances it has resulted in death.

Right to due process

120. It is not respected by any of the parties. In the Democratic Republic of the Congo, the Military Court, which is the only court in which civilians, journalists and human rights advocates are tried, remains fully functional. Victims of human rights violations are not granted redress, a fact which further confirms impunity. In RCD-controlled territory, the death penalty has been reinstituted through trials of the most summary nature in which no defense is admitted.

Freedom of movement

121. In both Kinshasa and Goma, members of the opposition are prevented from leaving the country and even from movement within it.

122. But the most serious issue is the deportation of Congolese citizens to Rwanda, where, in many cases, all trace of the prisoner is lost.

Freedom of conscience

123. In both sectors, religious persecution has been a constant throughout the year. Bishops, priests and ministers have been arrested, tortured, expelled and murdered. The most emblematic case has been that of the Archbishop of Bukavu, who was expelled from his diocese by RCD.

Persons at risk

124. The Government, with international assistance, has continued to provide protection to people who look like Tutsi in order to prevent reprisals against them, thereby disproving accusations of genocide.

Women and children

125. The situation continues to worsen. The Government and RCD have taken steps to demobilize children, but neither MLC nor the Ugandan troops have done so.

B. Recommendations

The parties in the wars

126. The Special Rapporteur recommends that the parties in the wars should: (a) fully implement the Lusaka Agreement and the necessary agreed adjustments thereto, considering the provisions of Security Council resolution 1304 (2000); (b) cooperate with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC); and (c) put an end to all forms of impunity.

The Government

127. The Special Rapporteur recommends that the Government should: (a) immediately establish the inter-Congolese dialogue, cooperating closely and actively with the Facilitator, who is a friend of the Congolese people, and with those who accompany him; (b) repeal the legislation on political parties and non-governmental organizations, recognize those which already exist and allow them to operate; (c) abolish the death penalty; (d) eliminate the Military Court; (e) free all political prisoners; (f) cease all forms of pressure or censorship of the press; (g) abolish the Constitutional and Legislative Assembly in order to permit the dialogue agreed to in Lusaka; (h) cease all cooperation with the Mai-Mai and the Interahamwe; (i) commute death sentences; (j) begin the demobilization of child soldiers; (k) restore relations with other States, intergovernmental organizations, the United Nations and OAU and attend the conferences and meetings organized by them since none of them is an enemy of the Democratic Republic of the Congo and all of them are simply endeavouring to assist it; (l) authorize the Human Rights Field Office in the Democratic Republic of the Congo to visit not only the jails, but all places of detention; (m) implement a human rights action plan; and (n) give international human rights instruments precedence over national law and honour the commitments made under them.

RCD and other rebel groups

128. The Special Rapporteur recommends that RCD and other rebel groups should: (a) cease all cooperation with foreign armies; (b) avoid committing any act which implies the exercise of sovereignty over foreign armies (including the flying of flags, partition or creation of provinces, town-twinning or sale of public property); (c) refrain from issuing fictitious accounts of

the atrocities committed by their troops and foreign allies and conduct objective investigations of allegations; (d) free political prisoners; (e) demand that their foreign allies return the deported Congolese to the State; (f) abolish the death penalty; (g) cease to interpret all acts of opposition as an alleged incitement to ethnic hatred; (h) permit organizations of civil society, particularly human rights organizations, to function freely; and (i) demobilize child soldiers.

Foreign armies occupying Congolese territory

129. The Special Rapporteur recommends that the foreign armies occupying Congolese territory should: (a) implement the Lusaka Agreement and, in particular, Security Council resolution 1304 (2000), which demands that they should withdraw immediately and prior to the withdrawal of the forces present at the Government's invitation; (b) accept the fact that they have lost all respect in the eyes of the Congolese people and refrain from all reprisal; (c) permit investigations of violations of human rights and international humanitarian law and, in particular, of the massacres that took place on 2 August 1998; (d) provide immediate compensation to the victims of the incidents that occurred at Kisangi and in other parts of the Democratic Republic of the Congo; and (e) return the Congolese property that has been taken from the country since 1998.

Organs of the United Nations

130. The Special Rapporteur recommends that the organs of the United Nations should: (a) continue to support the peace process in the Democratic Republic of the Congo and the inter-Congolese dialogue; (b) heed the words of the special rapporteurs on human rights in order to prevent recurrence of the incident reported in the Carlsson report on the occasion of the genocide in Rwanda, which a special rapporteur had predicted a year in advance without any action being taken. This recommendation is especially important in light of the establishment of peacekeeping mechanisms; (c) provide greater financial and logistical assistance to the mechanisms of the Commission on Human Rights; and (d) establish an effective arms embargo on all countries involved in the Congolese conflict.

Other organs of the international community

131. The Special Rapporteur recommends that other organs of the international community should: (a) support the peace process, the inter-Congolese dialogue and the democratization process; and (b) make their voices heard and their moral authority felt with regard to the massacres committed on Congolese soil.

Notes

[1] Chad withdrew its forces on 26 May 1999. The Sudan has troops in the Democratic Republic of the Congo, but these are not participating in the fighting.

[2] The Security Council (see S/PRST/2000/20) established an expert panel on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo.

[3] The Mai-Mai guerrillas, originally from the Banande and Bahunde tribes, have enlisted thousands of young people from all ethnic groups who are opposed to what they refer to as "Rwandan aggression". See E/CN.4/1999/42, note 4.

[4] In his report to the Commission on Human Rights (see E/CN.4/2000/42, para. 18), the Special Rapporteur stated that there is a general feeling throughout the country that the international community is not doing anything to end the conflict but that when that abstraction does do something, it is rejected for doing so. This reaction confirms this.

[5] See, for example, the statement by the Conference of Catholic Bishops in August 2000.

[6] The Special Rapporteur's report to the Commission on Human Rights (E/CN.4/2000/42) deals with individual cases of human rights violations.